2020 IL App (1st) 181005-U
No. 1-18-1005
Order filed September 25, 2020

Sixth Division

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 00 CR 236
	)	
JASON TAYLOR,	)	Honorable
	)	Timothy J. Joyce,
Defendant-Appellant.	)	Judge presiding.

JUSTICE GRIFFIN delivered the judgment of the court.
Presiding Justice Mikva and Justice Harris concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court's summary dismissal of defendant's postconviction petition is reversed because the petition alleged the gist of a constitutional claim that newly discovered evidence showed his inculpatory statement to detectives was involuntary.

¶ 2 Defendant Jason Taylor appeals from the circuit court's summary dismissal of his *pro se* petition pursuant to the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2016)), which alleged that newly discovered evidence, which was not available when he filed his pretrial motion to suppress an inculpatory statement to detectives, established that his statement

was involuntary and should not have been introduced at trial. The circuit court entered summary dismissal, finding that this court already denied this claim on direct appeal and the alleged newly discovered evidence in the petition was insufficient to lift the *res judicata* bar. We reverse.

¶ 3 This court described the evidence at defendant's suppression hearing and jury trial in detail in our order affirming defendant's conviction on direct appeal. See *People v. Taylor*, 1-01-3778 (2003) (unpublished order under Supreme Court Rule 23). Accordingly, we set forth only those facts necessary to resolve defendant's present claim.

¶ 4 Following his arrest in an unrelated matter on November 28, 1999, defendant was charged on December 2, 1999, with the June 10, 1999 murder of Stymie Thomas.

¶ 5 Before trial, defendant filed a motion to quash arrest and suppress evidence and a motion to suppress statements, arguing that (1) his arrest was not supported by probable cause, and (2) his videotaped statement regarding Thomas's murder should be suppressed because it was involuntary. Respecting the videotaped statement, defendant's motion alleged that although he was informed of the *Miranda* rights (see *Miranda v. Arizona*, 384 U.S. 436 (1966)), he did not "knowingly and intelligently waive" those rights because the detectives who took his statement told defendant he was not the target of the investigation and would only be a witness, which made him "unable to appreciate and understand the meaning of his *Miranda* rights."

¶ 6 At a hearing on February 8, 2001, the trial court ruled that defendant's arrest was supported by probable cause and proceeded to defendant's motion to suppress his statement.

¶ 7 Detective Michael Cummings testified that on November 30, 1999, at 10:45 a.m., he picked up defendant from a police station, Mirandized him, and transported him to the Area Two Police

Station (Area Two). There, Cummings and Detective Daniel Judge interviewed defendant starting at approximately 1 p.m. Cummings Mirandized defendant a second time before the interview.

¶ 8 Defendant agreed to speak with the detectives, then admitted to planning Thomas's murder. The conversation lasted an hour. That evening, at approximately 8:15 p.m., Cummings contacted Assistant State's Attorney Dan Tiernan, who arrived at Area Two at approximately 9:15 p.m. Tiernan again Mirandized defendant, who agreed to give a videotaped statement. Cummings was not present for the statement. At no time during Cummings's interaction with defendant did he request an attorney, nor did Cummings speak with anyone purporting to be defendant's attorney at any time during the investigation. Cummings did not tell defendant he would only be treated as a witness.

¶ 9 On cross-examination, Cummings said defendant was not handcuffed to the wall while in the Area Two interview room. During that time, defendant was free to use the washroom. He was not offered a phone call but was given food. Cummings never told defendant he would be charged with murder. No one contacted Cummings by phone regarding defendant prior to his arrest. Defendant was in the interview room for nine hours before Tiernan arrived. Cummings heard Tiernan tell defendant that anything he said could be used in a legal proceeding. The interview room was locked while defendant was inside, and Cummings agreed that defendant was alone in the room for "much" of the time.

¶ 10 Tiernan testified that on November 30, 1999, he went to Area Two to speak with Cummings and Judge regarding Thomas's death. At approximately 9:15 p.m., Tiernan met with defendant, with whom Tiernan had met the previous evening on another matter. Tiernan Mirandized defendant from memory. Defendant agreed to speak with Tiernan, and they had two

conversations, each lasting over an hour. Defendant agreed to a videotaped statement around midnight and signed a consent form, then gave the statement at approximately 1:15 a.m. on December 1, 1999.

¶ 11 At some point that evening, Tiernan spoke with defendant alone and asked him how the detectives were treating him. Defendant said "he had been treated well" and was giving the statement "because it was the truth." During the statement, defendant said that no threats or promises were made in exchange for the statement. Tiernan never told defendant that he would only be treated as a witness. No attorney ever contacted Tiernan or anyone else on defendant's behalf.

¶ 12 The State played portions of defendant's videotaped statement for the court. The video is not included in the record on appeal, but the record does contain a transcript thereof. In the transcript, Tiernan introduces himself as a prosecutor and recites the *Miranda* rights. Defendant states that he understands those rights, agrees to speak freely and voluntarily, and was not threatened or promised anything for his statement. Defendant also states that he is 29 years old and attended some college.

¶ 13 On cross-examination, Tiernan stated that before his first conversation with defendant regarding the Thomas matter, he spoke to the detectives and knew defendant was a suspect. Defendant never said he wanted to speak to an attorney.

¶ 14 Defendant testified that he was arrested on November 28, 1999, and taken to the Area Four Police Station (Area Four), where he was handcuffed and placed in a "6 by 9" room for 15 or 20 minutes. The officers told defendant his charge was unlawful use of a weapon (UUW). Two detectives took him to a smaller room with no windows and handcuffed him to the wall. The

detectives then left the room, where defendant remained alone for 10 minutes. When they returned, the detectives asked defendant about the murder of Clarence Bellinger. Defendant asked to speak to Charles Murphy, his attorney. Defendant hired Murphy earlier that summer after a detective left his card at defendant's house, and Murphy told defendant that he spoke to the detectives on defendant's behalf. After speaking with Murphy, defendant did not think he was a suspect in an investigation. Murphy told defendant that if the detectives tried to speak with him, he should not say anything and call Murphy instead.

¶ 15 The detectives refused defendant's request to speak with Murphy, and told defendant he "didn't need a lawyer at the time." At that point, defendant had been in custody for over four hours. The detectives left defendant alone periodically, and each time the detectives returned and resumed questioning, defendant asked for his attorney. The detectives said he did not need a lawyer because he was "going to be a witness."

¶ 16 Days later, other detectives took defendant to Area Two, placed him in a "6 by 11 or 12" room, handcuffed him to the wall, and asked him about Thomas's death. Defendant asked to call Murphy, but the detectives continued questioning him. During the questioning, the detectives left "maybe four" times, leaving defendant alone in the room still handcuffed to the wall. They told defendant that his UUW charge might be dropped if he agreed to give a statement regarding Thomas's case, and defendant agreed to give a statement on that basis. Defendant waived his rights prior to giving the statement because he "thought [he] was a witness."

¶ 17 On cross-examination, defendant testified that he was in custody from the time he entered Area Four until the time he completed his statement in Area Two. He did not tell Tiernan that the detectives offered to drop the UUW charge in exchange for his statement. On redirect, defendant

testified that when he said in the videotaped statement that he was not promised anything, he was only referencing "money or things like that."

¶ 18 Defendant entered the affidavit of Charles Murphy into evidence, in which Murphy swore that he told a detective that defendant would invoke his right to remain silent regarding any homicide investigation and that the detectives should call Murphy first if they wanted to speak to defendant. The detectives told Murphy that defendant was not a suspect in their investigation. Murphy only learned of defendant's November 28, 1999 arrest "a week or two" after it occurred. The affidavit did not mention the date of Murphy's alleged conversation with the detective, the detective's name, or the phone number Murphy called.

¶ 19 During argument, the State challenged defendant's testimony as incredible and argued that the videotaped statement showed that he voluntarily waived his right to counsel and was not promised anything in exchange. Defense counsel argued that defendant's version of events was credible, and the contention that he asked for a lawyer was bolstered by Murphy's affidavit. According to defense counsel, if defendant believed he was only a witness in the Thomas case, he could not knowingly and intelligently waive his right to counsel.

¶ 20 The court denied defendant's motion to suppress, finding that there was no dispute he was Mirandized, and the totality of the circumstances suggested defendant did not invoke his right to counsel.

¶ 21 At trial, Ruby Page testified that she was on the porch of her home near the 1100 block of East 82nd Place on June 10, 1999, at around 2 a.m., when she saw two individuals walking towards a hill near railroad tracks in the area. The individuals, both wearing blue or black hooded sweatshirts with the hoods pulled over their heads, walked up the hill. Moments later, Page heard

gunshots and ran inside her house. The next morning, around 9:30 a.m., Page saw a body near the hill and called the police.

¶ 22 Mary Cosgrove, a forensic investigator for the Chicago Police Department, testified that she recovered two fired cartridge casings near the victim's body, along with a wrench and a screwdriver. The victim wore white surgical gloves. Later, Cosgrove received from Dr. Nancy Jones an envelope containing bullets recovered from Thomas's body following an autopsy. On cross-examination, Cosgrove stated that no trace evidence was collected from the scene.

¶ 23 The parties stipulated to expert testimony that no latent fingerprints were recovered from the cartridge casings, wrench, or screwdriver, and the bullets and cartridge casings were fired from the same firearm. The State also entered a stipulation that Dr. Nancy Jones, a medical examiner for Cook County, would testify that Thomas's cause of death was multiple gunshot wounds to the head.

¶ 24 Arlene Thomas testified that Thomas was her son.[1] During the investigation of his death, she told Cummings that Thomas belonged to the Four Corner Hustlers gang and spent time with Stephen Manning, Damien Jones, and defendant, whom she identified in court.

¶ 25 Cummings testified that he learned about defendant, Jones, and Manning from Arlene. Following an investigation, Jones and Manning were both detained and interviewed, then charged with Thomas's murder. Cummings also placed a "stop order" on defendant, which Chicago detectives use to indicate they want to interview an individual. On the morning of November 30, 1999, Cummings was alerted that defendant was in custody, which led to defendant's interrogation and videotaped statement.

[1] Because the victim and Arlene share a last name, we will refer to Arlene by her first name.

¶ 26 Cummings testified consistently with his testimony at the suppression hearing regarding the circumstances of defendant's statement. Cummings again testified that defendant was not handcuffed in the interrogation room and never asked for an attorney.

¶ 27 During the interrogation, Cummings informed defendant that Jones and Manning had been charged with Thomas's murder. Defendant responded that he did not kill Thomas, but was present when it happened. Cummings then testified to the substance of defendant's videotaped statement, in which defendant explained how he helped plan Thomas's murder, including choosing the location on 82nd and placing the wrench, screwdriver, and gloves to mislead the police.

¶ 28 On cross-examination, Cummings said he told defendant he would testify against defendant in court.

¶ 29 Tiernan testified consistently with his testimony at the suppression hearing. The prosecution then published defendant's videotaped statement. The transcript of defendant's statement that is included in the record on appeal comports with Cummings's testimony about the statement.

¶ 30 Defendant testified consistently with his testimony at the suppression hearing regarding the circumstances of his statement. He also testified that he told detectives that everything he knew about Thomas's murder he heard from Jones and Manning. The detectives told him that if defendant was going to be a witness, he needed to "put [himself] there" at the scene of the crime. Defendant said he was "scared" and "would have basically said anything" to "get out of there." He denied helping to plan Thomas's death, and only said he helped to plan the murder in the videotaped statement because, "That's what the detectives told me to say."

¶ 31 On cross-examination, defendant testified that it never occurred to him during the interrogation that he would not be used as a witness. He was not present when Thomas was killed, and he did not help plan Thomas's murder. Over a period of days, the detectives made defendant memorize the statement they wanted him to give.

¶ 32 In rebuttal, the State called Officer Amalio Corral, who testified to the circumstances of defendant's arrest on November 28, 1999. The State also recalled Cummings, who denied asking defendant to memorize and rehearse a statement. Next, the State called Judge, who denied telling defendant that he did not need a lawyer because he would just be used as a witness, and stated defendant never asked for a phone call or for his attorney. Finally, Detective Anthony Carothers testified that he was present on November 30, 1999, for defendant's videotaped statement in the Bellinger matter. At no time during that statement did defendant ask for an attorney or to make a phone call, and Carothers never told defendant he would only be treated as a witness instead of a suspect.

¶ 33 The jury found defendant guilty of first degree murder. After a hearing, the court denied defendant's motion for a new trial. Following another hearing, the court sentenced defendant to 45 years' imprisonment.

¶ 34 On direct appeal, defendant alleged that (1) the trial court erred by not suppressing his statement, not allowing Murphy to testify, and permitting evidence of other crimes; (2) the State committed misconduct during closing argument; and (3) the evidence did not prove his guilt. As to his claim that his statement should have been suppressed, defendant argued that "his statements were involuntary because he was held in custody for five days, handcuffed in locked interview rooms, denied access to an attorney, and deceived by the police into confessing." *People v. Taylor*,

1-01-3778 (2003), at 5 (unpublished order under Supreme Court Rule 23). This court affirmed, finding in relevant part that "defendant's statements were made freely, voluntarily, and without compulsion." *Id.* at 6.

¶ 35 On July 8, 2008, defendant filed a petition pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2008)), arguing that the State of Illinois lacked jurisdiction over him. The circuit court denied the petition on October 2, 2008.[2] The record does not show that defendant appealed.

¶ 36 On December 29, 2017, defendant filed the instant *pro se* postconviction petition, alleging a due process violation because his videotaped statement was fabricated and the result of coercion by Cummings, who threatened to charge defendant with murder if he did not implicate himself and his alleged co-offenders. The petition further alleged that Cummings procured fabricated confessions in other cases, including the case of Corethian Bell. Additionally, defendant alleged he consistently maintained his innocence, that the detectives had "detained [him] for days [and] deprived [him] of adequate sleep, and food," that the detectives denied his right to an attorney despite his requests, and Cummings supplied the details defendant relayed in the videotaped statement.

¶ 37 Defendant attached several exhibits to his petition, including a Chicago Tribune article from July 16, 2002, regarding Bell's lawsuit against Cummings, other Chicago police detectives, and the City of Chicago. The suit arose from the detectives' interrogation of Bell, whom the article

[2] There is no report of proceedings from October 2, 2008. The court's half-sheet for that date states only that a "petition" was denied, while the electronic docket indicates that a "PC petition" was denied. The electronic docket entry appears to be an error because the record does not contain any indication that defendant filed a postconviction petition prior to the one at issue here.

described as "mildly mentally retarded" and having paranoid schizophrenia. That interrogation allegedly resulted in Bell's false, coerced confession to his mother's murder in July 2000. According to the article, Bell claimed that he was subjected to "windowless interrogation" for 50 hours, and that detectives physically abused him, suggested details, and rehearsed the statement with him. Defendant also attached an excerpt from a "tarnished-badge list" which included Cummings' name and contained a short narrative of Bell's case, a December 27, 2016 article from the Northwestern Pritzker School of Law describing Bell's case, a letter from the State of Illinois Torture Inquiry and Relief Commission (TIRC) to defendant dated February 8, 2017, acknowledging receipt of a claim form, and a transcript of defendant's testimony from the suppression hearing.

¶ 38 Defendant filed with the postconviction petition a "verified motion for leave to file [a] successive post conviction petition," which set out the same argument but included the following additional exhibits: (1) a letter from TIRC, dated September 23, 2016, informing defendant that his September 15, 2016 request for information regarding Cummings returned no results, but neither confirming nor denying whether Cummings was the subject of any active inquiries, and (2) a FOIA request to TIRC dated October 28, 2016, requesting information about Cummings and Detectives Walter Perkins and Anthony Carothers. Defendant also attached a memorandum of law in support of the petition.

¶ 39 On March 22, 2018, the circuit court summarily dismissed the petition. At a hearing, the court clarified that though defendant titled the filing a petition for successive postconviction relief, it was actually his first postconviction petition. The court then stated that the petition was "patently frivolous and without merit." In its accompanying order, the circuit court explained that *res*

judicata applied to defendant's claim because defendant argued on direct appeal that the trial court erred in not suppressing his statement. The court further found that the allegations and materials attached to the petition regarding Bell's case did not constitute substantial new evidence such that the *res judicata* bar could be lifted because (1) the evidence was immaterial due to dissimilar methods of abuse and differences between defendant and Bell, and (2) the evidence would not likely lead to a different result at retrial because it would not affect the court's credibility determination where there was a single alleged incident, not a "pervasive" pattern. The court also mentioned that the 2002 and 2006 articles were discoverable prior to defendant filing his 2-1401 petition.

¶ 40 On appeal, defendant argues that the circuit court erred in summarily dismissing his petition because it alleged the gist of a constitutional claim that his inculpatory statement was involuntary and should not have been introduced at trial. According to defendant, this claim was supported by substantial new evidence of Cummings's history of coercive interrogation, which was not available when he filed his pretrial motion to suppress an inculpatory statement to detectives, such that *res judicata* should not apply.

¶ 41 The Act provides "a mechanism by which a criminal defendant can assert that his conviction and sentence were the result of a substantial denial of his rights under the United States Constitution, the Illinois Constitution, or both." *People v. English*, 2013 IL 112890, ¶ 21. Claims in a postconviction petition are considered in three stages. *People v. Ligon*, 239 Ill. 2d 94, 103 (2010). At the first stage, a defendant need only include sufficient allegations to set forth the "gist" of a constitutional claim. *Id*. at 103-04. The circuit court is not to determine the merits of the claims, but only whether any of them have an arguable basis in law or fact. *People v. Smith*, 326

Ill. App. 3d 831, 839 (2001) (citing *People v. Gaultney*, 174 Ill. 2d 410, 418 (1996)). If no claims in the petition meet this threshold, the circuit court may enter summary dismissal on the basis that the petition is "frivolous" or "patently without merit." 725 ILCS 5/122-2.1(a)(2) (West 2016). We review the summary dismissal of a postconviction petition *de novo*. *People v. Hodges*, 234 Ill. 2d 1, 9 (2009).

¶ 42 Claims that have previously been ruled on may not be included in a postconviction petition and are barred by *res judicata*. *People v. Patterson*, 192 Ill. 2d 93, 139 (2000). This bar may be lifted, however, if a defendant's postconviction claim is based on "substantial new evidence." *Id.* For evidence to qualify, the defendant must demonstrate that it (1) was discovered after trial, and could not have been discovered before trial through due diligence; (2) is material and not merely cumulative; and (3) is "of such conclusive character that it will probably change the result upon retrial." *Id*.

¶ 43 A defendant's burden to demonstrate the new evidence is substantial is reduced at the first stage of postconviction review because the defendant is not seeking retrial, but only advancement to the second stage. *People v. Reyes*, 369 Ill. App. 3d 1, 18 (2006).

¶ 44 Defendant here claims that his due process rights were violated because his videotaped statement was involuntary. "To be admissible, a confession must be voluntary, a threshold legal determination that is made by the trial judge." *People v. James*, 2017 IL App (1st) 143391, ¶ 129 (citing *People v. Jefferson*, 184 Ill. 2d 486, 498 (1998)). A confession is not voluntary in the absence of counsel unless the defendant knowingly and voluntarily waived his right to counsel and his right against self-incrimination. See *People v. Braggs*, 209 Ill. 2d 492, 505 (2003). The use of

an involuntary confession as evidence at trial violates the defendant's constitutional right to due process. *People v. Veal*, 149 Ill. App. 3d 619, 622 (1986).

¶ 45 The new evidence proffered with defendant's postconviction petition involves Cummings's alleged history of coercive interrogation techniques, including the Bell interrogation and subsequent lawsuit in which Cummings was accused of eliciting a false confession by psychological coercion.

¶ 46 There is no dispute that the information respecting Bell's lawsuit constitutes "new" evidence, as defendant was convicted on August 21, 2001, and the articles describing Bell's interrogation were not published until 2002 and 2006, respectively. We note that the articles were ostensibly discoverable to defendant prior to his filing of the section 2-1401 petition in 2008, but section 2-1401 petitions are not the proper venue for constitutional claims. See *People v. Pinkonsly*, 207 Ill. 2d 555, 566 (2003). As such, defendant's petition sufficiently alleges that the evidence is "new" for purposes of the substantial new evidence analysis.

¶ 47 Moving to materiality, evidence of past police misconduct may be relevant to prove a course of conduct or impeach officer credibility. *Reyes*, 369 Ill. App. 3d at 18. Such evidence has been found admissible where (1) the presently accused officer was involved in prior incidents, (2) that officer used similar methods of abuse in the prior incidents, and (3) the prior incidents "occurred at or near the time of the defendant's allegations." *Reyes*, 369 Ill. App. 3d at 18-19 (citing *Patterson*, 192 Ill. 2d at 115). "Even one incident of similar misconduct by the same detectives *** could impeach the officers' credibility." *People v. Tyler*, 2015 IL App (1st) 123470, ¶ 186 (citing *People v. Banks*, 192 Ill. App. 3d 986, 994 (1989)).

¶ 48 Here, the Bell matter is the only specific prior incident of abuse described in defendant's petition and the attached materials. In his opening brief on appeal, defendant cites multiple orders from this and other courts that describe accusations against Cummings of coercive interrogation techniques. Though defendant did not include information regarding these cases in his postconviction petition, and they were not considered by the circuit court, he now asks this court to take judicial notice of these matters and consider them in the analysis of whether Cummings exhibited a pattern of misconduct.

¶ 49 A court may, in its discretion, take judicial notice of readily verifiable factual matters, including the orders and materials of record in other court proceedings. See *People v. Chambers*, 2016 IL 117911, ¶ 94 n.3. We decline to take judicial notice here, however, because the additional matters mentioning Cummings were not considered by the circuit court. See *People v. Garcia*, 2017 IL App (1st) 133398, ¶ 35 (citing *People v. Heaton*, 266 Ill. App. 3d 469, 476 (1994) (explaining that "this court will not take judicial notice of critical evidentiary material not presented in the court below")).

¶ 50 Applying the materiality factors to the materials that were considered by the circuit court, we find that defendant's proffered new evidence regarding the Bell matter makes a threshold showing that the information from the Bell case could be relevant to a trial court's suppression decision. There is no dispute that Cummings was involved in both cases. Further, the Bell investigation happened in July 2000, just months after defendant's statement, and thus is sufficiently close enough in time to be considered material. See *Banks*, 192 Ill. App. 3d 986, 993-94 (1989) (incidents of police misconduct that occurred 13 months apart were sufficiently close in time for purposes of materiality).

¶ 51 The circuit court decided that the evidence was not material because the methods of abuse were too dissimilar. Defendant's petition alleged that the detectives kept him in an interrogation room, handcuffed to the wall, for at least 12 hours, and that he was in custody for two days. He further alleged he was denied the opportunity to speak to an attorney and that Cummings then convinced him he would only be used as a witness if he gave a statement implicating himself. In the Bell matter, the defendant was allegedly kept in an interrogation room for 50 hours and isolated from others, then convinced to give a statement implicating himself in a crime he did not commit. These are arguably similar techniques such that defendant has alleged the factual basis for materiality. We acknowledge there are differences in the specific circumstances, and that defendant and Bell apparently were not similarly situated respecting their education and cognitive abilities, but these are matters better suited for resolution later in the postconviction process because "the trial court is not to consider a first-stage petition on the merits." *Reyes*, 369 Ill. App. 3d at 18.

¶ 52 Turning to conclusiveness, our inquiry in this case has two stages: first, would the evidence likely change the result at a suppression hearing, and second, if yes, would the result at retrial likely be different without the statement. See *id.* at 19.

¶ 53 In this case, the circuit court ruled that the Bell evidence would not change the result at retrial because it did not establish a "pervasive" pattern of misconduct by Cummings such that the trial court would discredit his testimony. We disagree. At the first stage, the defendant need only allege the gist of a constitutional claim. Whether the Bell evidence is in fact enough to likely change the result at the suppression hearing is not yet at issue, and the only question is whether the evidence as alleged, if proven true, could be capable of changing the result. Defendant will

have to demonstrate why Cummings's credibility would be so tainted that defendant's statement should be suppressed at a later stage of postconviction review, but for our purposes here, his allegations, taken as true, are sufficient to progress to the second stage. See *Reyes*, 369 Ill. App. 3d at 22-23 (citing *Smith*, 326 Ill. App. 3d at 839-40).

¶ 54 Moving to whether the trial result would be different, there is no doubt that without defendant's statement, the State's case would have been "severely weakened." See *Reyes*, 369 Ill. App. 3d at 19 (finding that the result at trial likely would have been different without the defendant's inculpatory statement where there was no DNA or physical evidence in the record). At trial, the State entered no physical evidence or witness testimony linking defendant to Thomas's death.

¶ 55 Additionally, we note the recent supreme court case of *People v. Robinson*, 2020 IL 123849, where the court discussed the "conclusive" standard in the context of an actual innocence claim in a motion for leave to file a successive postconviction petition. *Robinson*, 2020 IL 123849, ¶ 47. The court explained, "Ultimately, the question is whether the evidence supporting the postconviction petition places the trial evidence in a different light and undermines the court's confidence in the judgment of guilt. The new evidence need not be entirely dispositive to be likely to alter the result on retrial." (Internal citations omitted.) *Id.* ¶ 48. As the standards for lifting the *res judicata* bar and for actual innocence claims have been described as "nearly identical" (*Tyler*, 2015 IL App (1st) 123470, ¶ 200), the supreme court's guidance here further suggests that this matter is appropriate for advancement to the second stage.

¶ 56 In sum, *res judicata* does not bar defendant's claim at the first stage because the allegations in his petition and attached materials, taken as true and construed in defendant's favor, arguably

meet the substantial new evidence requirements outlined in *Patterson* and *Reyes* and also set forth the gist of a constitutional claim for a violation of defendant's due process rights. Whether the allegations and materials in fact suffice to lift the *res judicata* bar and establish a constitutional claim are matters for the subsequent stages of postconviction review. Accordingly, we remand to the circuit court for second stage postconviction proceedings.

¶ 57 Reversed and remanded.